

REMARKS

In the Office Action of March 24, 2009, the Examiner rejected claims 11, 13, 16-20, 22, 23 and 26-28. The Examiner objected to claims 12, 14, 15, 21, 24 and 25.

Claims 11, 13, 16-20, 22, 23 and 26-28 were rejected under 35 USC 103(a) as being unpatentable over Mersmann, et al (7,484,957) in view of Modes (3,955,595).

Claims 12, 14, 15, 21, 24, 25 and 29 were objected to as being dependent upon a rejected base claim and would be allowable if rewritten in independent form. Applicants have rewritten claims 24, 25 and 29 in independent form, however, based on the explanation below, Applicants submit that all of the claims are allowable as previously presented.

Applicants submit that the base reference, Mersmann '957, relied on by the Examiner does not qualify as prior art with respect to the present application. Mersmann '957 has a publication date of June 7, 2007 and which has an effective filing date (the PCT filing date) of November 25, 2004. The PCT application was nationalized in the US with a national stage filing on May 16, 2006 and was completed with the filing of the signed declaration on January 12, 2007. Mersmann '957 is based upon a PCT application which itself was published on June 9, 2005. The PCT application was published in German, not English. The priority application for the PCT application was a German application which was published on July 28, 2005.

Therefore, the earliest publication date (relative to 102(b)) for any application related to Mersmann '957 is June 9, 2005. The earliest possible filing date (relative to 102(e) for the Mersmann '957 application in the US is May 16, 2006 since the PCT application was published in German, not English, therefore the earlier PCT filing date is not effective for 102(e) purposes (see MPEP 706.02).

Based on these dates of an earliest publication date of June 9, 2005 and an earliest US filing date of May 16, 2006, Mersmann '957, and its foreign counterparts, is not effective as prior art against any application having a US effective filing date prior to May 16, 2006.

The present application is a US national stage application based on a PCT filing date of December 16, 2004, which itself claims priority to two earlier German applications filed on December 19, 2003 and October 23, 2004. Since the present application has an effective filing date of the PCT filing date because the US was designated at the time the PCT application was filed and the national stage filing occurred within 30 months of the earliest priority application filing date, the effective filing date for the present application is at least December 16, 2004, well prior to the May 16, 2006 effective prior art date for Mersmann '957.

Applicants believe that the present application also can claim benefit of the earlier German priority filing dates, if necessary, however, since the PCT application filing date (the effective US filing date) well precedes the effective prior art dates for Mersmann '957, it is not necessary relative to Mersmann '957 to establish the earlier filing dates.

In view of the above discussion, applicants request that the Examiner reevaluate the effectiveness of Mersmann '957 as prior art and confirm that Mersmann '957 is not effective prior art relative to the present application.

Without the base reference available as prior art, applicants submit that all of the claims of the present application are patentably distinguishable over the remaining references cited by the Examiner. Therefore, the applicants request that the Examiner indicate that original claims 11-29 are allowable.

An Information Disclosure Statement is being provided along with this amendment identifying references (and enclosing copies of non-US references) discussed in the present application and references cited in co-pending foreign applications. Applicants request the Examiner to consider such references and indicate that such consideration has been made.

Applicants submit that all of the claims of the present application are patentably distinguishable over the references now of record and request the Examiner to indicate all claims as allowed and to pass the application to issue.

Respectfully submitted,

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